THE LAW OF DEDICATION IN ITS RELATION TO TRUST LEGISLATION.

THE principles and doctrines of the common law and of equity have a twofold operation. In the first place, they create rights, and afford remedies, in and of themselves, without legislation. In the second place, they afford a justification and a basis for legislation. This second feature has a vast practical operation in this country, where legislation is confined by written constitutions, and must justify itself as constitutional; for the doctrine has arisen and is firmly established and of wide-spread application here, that the underlying doctrines and principles of the common law and of equity, so far as they are not affirmatively cut down by constitutions, remain notwithstanding the creation of a constitution; and that such doctrines and principles are to be viewed as stocks upon which by legislation new shoots or "extensions," as they are commonly called, may be freely grafted.

Thus, the common law doctrines as to common carriers, innkeepers, wharves, and the like, can be applied in legislation to modern grain elevators,[1] "tickers,"[2] stock-yards,[3] and this to the extent of introducing important features not provided by the common law, such as the requirement of giving bond, the requirement of a license, and provision for revocation of the license by an executive officer.[4] The doctrines of law and equity as to nuisance may be extended to acts which at the common law were not nuisances, nor even unlawful, as the maintaining of a building for the sale of spirituous liquors contrary to a state statute. Such legislative extension of the doctrine may even have the operation of permitting injunctions against the use of the building without trial by jury.[5] The principles (of ecclesiastical law origin) relating to divorce *a mensa et thoro* may be extended by legislation to mere compulsory support by a husband of his wife; and the absence of trial by

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[1] Munn *v.* Illinois, 94 U. S. 113.

[2] Friedman *v.* Gold & Stock Tel. Co., 32 Hun 4; Smith *v.* Gold & Stock Tel. Co., 42 Hun 454.

[3] Cotting *v.* Kansas City Stock Yards Co., 183 U. S. 79, 84.

[4] Munn *v.* Illinois, *supra.*

[5] Mugler *v.* Kansas, 123 U. S. 623.

jury is a feature of the extension,[1] as of the original doctrine. The same is true of extension of equitable doctrines as to clearing titles, and of making decrees operative directly upon land.[2]

Not only do the principles and doctrines of the common law and of equity serve as a constitutional support for legislation; they perform also the extremely important service of guiding the legislation in paths consonant with the traditions of our race and in harmony with our existing system, and thus point out a way not merely of effective advance, but of wise advance.

It is proposed in this article to call attention to the origin, rise, and doctrines of the law of dedication, and to point out their power and their fitness to perform an important service in "Trust" legislation. What is to be said is pertinent to any class of property, real or personal, held by any Trust, and peculiarly adapted to its affairs. To avoid burdensome repetition and differentiation, however, the law of dedication will be discussed with a view to Trust legislation in respect of Trusts which hold coal lands and oil lands.

When Blackstone wrote, the law had lately emerged from feudal conditions. It had, however, emerged, not with a doctrine and practice of exclusiveness in private land title, but with a contrary doctrine, and an immense number of concrete applications of it. From one end of England to the other, there existed rights of the general public (or of what may be called a local public, consisting of groups of small land owners) informally acquired, in the form of ways, and commons. Among these rights of common were rights to feed animals on private land; to take fish out of private waters; and — what is closely pertinent to the present discussion — the right to strip private land of physical portions of the soil, on the surface, or above the surface, or under the surface. These latter rights included rights of taking wood for building, and wood or peat for fuel, and minerals, stones, and coal.[3] These rights, says Blackstone,[4] "bear a resemblance to common of pasture in

[1] Bigelow *v.* Bigelow, 120 Mass. 320.

[2] Cook *v.* Allen, 2 Mass. 461; Dascomb *v.* Davis, 5 Metc. (Mass.) 335; Foster *v.* Abbott, 8 Metc. (Mass.) 596; Jackson *v.* Lamphire, 3 Pet. 280; Eitel *v.* Foote, 39 Cal. 439; Jackson *v.* Babcock, 16 N. Y. 246; Sullivant *v.* Weaver, 10 Ohio 275; Freeman, Judgments, sec. 307; Parker *v.* Overman, 18 How. 140; Langdon *v.* Sherwood, 124 U. S. 74.

[3] 2 Bl. Com. 34.

[4] 2 Bl. Com. 34.

many respects, though in one point they go much farther; common of pasture being only a right of feeding on the herbage and vesture of the soil, which renews annually; but common of turbary and those afore-mentioned are a right of carrying away the very soil itself."

Actual titles of this class had, in great part, arisen, during some centuries preceding Blackstone, in an informal manner. They had undoubtedly originated in most instances in permission; but beginning as privileges, they had gradually hardened themselves into title.

Every system of law, when confronted with existing conditions the origin of which cannot be historically traced, conjures up a theory of origin. In respect of these different classes of easements and profits, there were in Blackstone's time, and there still are, theories upon which existing titles of this class had arisen, and upon which, therefore, new titles of this class might arise. Some of these titles were supposed to have arisen by custom; others by prescription; others by formal conveyance.

Blackstone states the theories; but, with his characteristic bluntness, he also tells us how these titles in fact arose. He says that they arose, in fact, *out of the necessities of the public.* Some of them, he says,[1] were

"originally permitted, not only for the encouragement of agriculture, but for the necessity of the thing. For, when lords of manors granted out parcels of land to tenants, for services either done or to be done, these tenants could not plough or manure the lands without beasts; these beasts could not be sustained without pasture; and pasture could not be had but in the lord's wastes, and on the unenclosed fallow grounds of themselves and the other tenants. The law therefore annexed this right of common, as inseparably incident, to the grant of the lands; and this was the original of common appendant; which obtains in Sweden, and the other northern kingdoms, much in the same manner as in England."

Public policy, that is to say necessity, — growing of course out of the feature of local monopoly, — is therefore capable by our law of creating, and in fact to an enormous extent has created, public rights, or rights of groups of outsiders, in private land. Indeed, the whole story is told by the name of one class of these rights, — a right of taking necessary wood, for fuel or for construction, from private land. This class of rights is called in our law "estovers,"

[1] 2 Bl. Com. 33.

which, as Blackstone points out,[1] is the French equivalent of our word "necessaries." These commons of "necessaries," says Blackstone,[2] arise

"from the same necessity as common of pasture: viz., for the maintenance and carrying on of husbandry; common of piscary being given for the sustenance of the tenant's family; common of turbary and fire-bote for his fuel; and house-bote, plough-bote, cart-bote, and hedge-bote for repairing his house, his instruments of tillage, and the necessary fences of his grounds."

The doctrine thus formulated and recognized when Blackstone summarized the law, is in full force in England to-day. As to the various titles which in England have arisen under them, the exact manner of acquisition was determined by local conditions which in England have now to a considerable extent passed away, and in this country have never existed. The result is, that the theories under which such titles are supposed to have arisen in England, and may arise there now, are not suited to modern times. But while Blackstone, in his character of historian and philosopher, tells us that these theories are unfounded, nevertheless they had become operative doctrines, and imposed limitations upon the courts.

Some of these limitations were as follows:

Easements proper — that is, rights of going over, or doing something else upon another's real estate, but without stripping it — may, in theory of law, have arisen, and may now arise, by grant or by custom. When they arise by custom, they may arise in favor of the entire public of a community. Profits *a prendre*, on the other hand, — that is, rights of taking away physical portions of the realty, such as coal, — have in theory of law arisen in the past, and can now in theory of law newly arise, only by grant or by prescription, and cannot in theory arise in favor of the general public. In the case of both easements and profits, moreover, acquisition by custom or by prescription requires a long period of time.

These theories, therefore, invented by the courts generations ago in aid of public or quasi-public rights, gradually became under modern conditions incapable of effectual operation; and a new theory was needed. The English courts met the occasion by seizing upon a doctrine which had been loosely employed in a

[1] 2 Bl. Com. 35. [2] Ibid.

few cases in the eighteenth century, but was so little regarded in Blackstone's time as not to be alluded to by him, — a doctrine which the courts, inventing the word, termed "dedication." Under this doctrine, as the courts finally formulated it, a private owner may, by informal action extending over a very limited time, or even by one decisive act, vest in the public, or in a part of the public, any one of a great variety of interests in his land. The most familiar example of dedication is presented in the case where a man moves his fence back, and thus, in the popular phrase, "throws" a piece of his land "into the street."

With this doctrine — first brought prominently into view in the nineteenth century — the English courts found a weapon which they soon began to use with effect. Under it they in one case recognized the creation of a public easement in private land, by informal dealings of the land-owner with the public over as short a period as eighteen months;[1] and in another case permitted a jury to find an instantaneous dedication;[2] and they also dispensed with the prerequisite of use by the *whole* of the general, or of a local, public; for in 1800 they announced that mere occasional use may support a title in the public by dedication.[3]

Owing to historical and local reasons, the law of prescription and custom has received an immense development in England, and the law of dedication but a narrow one. In this country, for historical reasons, we find precisely the contrary. Here, up to a comparatively recent period, the land was held in small farms, and there were very few customary or prescriptive rights other than easements of way; but when, with the advent of modern conditions, the question of informal acquisition by the public of rights in private land began to arise in this country, such rights, if they were to arise at all, had to arise like Jonah's gourd. They could not be rested upon ancient custom; and the result has been that while the law of dedication exists only as a grain of mustard seed in England (occupying less than seven pages in the latest English digest, and there classed as a mere sub-head of the law of ways), it occupies, in the American Digest, Century Edition, one

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[1] North London Railway Co. *v.* St. Mary Vestry, 27 L. T. 672; 21 W. R. 226.

[2] Reg. *v.* Petrie, 4 El. & Bl. 737 (1829).

[3] Mildred *v.* Weaver, 3 F. & F. 30. See also Powers *v.* Bathurst, 49 L. J. Ch. 294; Greenwich Board of Works *v.* Maudslay, L. R. 5 Q. B. 397; Grand Surrey Canal Co. *v.* Hall, 1 Man. & G. 392; Rex *v.* Leake, 5 B. & Ad. 469; Grand Junction Canal Co. *v.* Petty, 21 Q. B. D. 273.

hundred and eleven similar pages, with elaborate classification and subdivision. Not only has it received a far greater number of individual applications, in reported decisions, in this country than in England, — and that in a very brief space of time, — but it has received in this country a much broader development, owing to conditions peculiar to a new country. Thus, under decisions in this country, land may be dedicated for a burying ground;[1] for a public square or common;[2] for a public landing-place on a water front;[3] for school purposes;[4] for religious purposes;[5] for irrigation purposes;[6] for a court-house and jail;[7] for a college;[8] for public uses generally.[9]

It need hardly be said that the law of dedication does not go so far as to enable the owner of land to foist it upon the public against their will; and that therefore the consent of the public to a given dedication is essential in order to burden them with the responsibilities of ownership; but their endorsement of a dedication may be shown by mere informal acts, and, in fact, can be shown in no other way.[10]

Dedication need not be, and rarely is, of an absolute and exclusive title in the land, but is commonly of a mere partial interest of some kind in the land, —as in the familiar case of throwing land into a way to widen it, where nothing is dedicated to the public but a right to pass over the land.[11]

Theoretically there must be intention on the part of the private owner, to make an effectual dedication; but such intention may

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1 Beatty *v.* Kurtz, 2 Pet. 566; Davidson *v.* Reed, 111 Ill. 167; Pierce *v.* Spafford, 53 Vt. 394.

2 Huber *v.* Gazley, 18 Ohio 18; Pierce *v.* Roberts, 57 Conn. 31; Rhodes *v.* Brightwood, 145 Ind. 21; Price *v.* Plainfield, 11 Vroom 608; Cincinnati *v.* White, 6 Pet. 431.

3 Village of Mankato *v.* Willard, 13 Minn. 13; Gardiner *v.* Tisdale, 2 Wis. 153; Coffin *v.* Portland, 27 Fed. Rep. 412; Godfrey *v.* City of Alton, 12 Ill. (2 Peck) 29, 52 Am. Dec. 476.

4 Klinkener *v.* School Directors, 11 Pa. St. 444; Singleton *v.* School District, 10 S. W. Rep. 793; Carpentia School District *v.* Heath, 56 Cal. 468.

5 Hollar *v.* Herney, 4 Ky. Law Rep. 988.

6 Delaney *v.* Boston, 2 Har. (Dela.) 489.

7 State *v.* Travis County, 85 Tex. 435.

8 Village of Weeping Water *v.* Reed, 21 Neb. 261.

9 Chicago, etc., Co. *v.* Joliet, 79 Ill. 25; Doe *v.* Attica, 7 Ind. 641; Young *v.* Mahaska Co., 88 Iowa, 681.

10 People *v.* Davidson, 79 Cal. 166; Riley *v.* Hammel, 38 Conn. 574; Cook *v.* Harris, 61 N. Y. 448; Shanks *v.* Whitney, 66 Vt. 405.

11 See Manly *v.* Gibson, 13 Ill. 308, 313; St. Mary *v.* Jacobs, L. R. 7 Q. B. 47, 53; Verplanck *v.* City of New York, 2 Edw. Ch. 220, 225.

be, and in almost every instance is, shown exclusively by his physical acts; and the requirement of intent upon his part is hardly more than theory. Indeed, the private owner's action is ordinarily such that he would be estopped to deny the existence of an intention on his part.

The fact that the public use begins by express consent does not prevent the use from hardening into title.[1]

Where he who dedicates has himself only a limited title, his dedication goes as far as his title. Thus, if one who has a leasehold interest dedicates, he dedicates the leasehold; or where the land is subject to an existing easement, the dedication is subject to that easement.[2]

Dedication, although usually made without specific compensation, nevertheless may be made for a money consideration. Thus, where proceedings were had to condemn land for a street, it was held that if the proceedings were invalid, but the owner had accepted the condemnation award regardless of the validity of the proceedings, his act amounted to an effectual dedication, notwithstanding the fact that he had done it for money.[3] It seems to follow that a dedication may be none the less effectual because one qualification imposed in connection with it is that of paying upon each occasion of use.

A public easement arising by dedication may arise at once, by one decisive act.[4] This doctrine has repeatedly been applied in this country, perhaps most frequently in cases where the dedication was held to have been made by publishing a plan showing a park, a street, or the like.[5]

Dedication, once made, is irrevocable.[6] In fact, the public cannot lose their rights by failure to exercise them.[7]

Dedication of a certain interest in land by the general owner leaves in the general owner the exercise of all other rights of ownership consistent with the dedication, including the right of possession, in so far as it is consistent with the public easement.[8]

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[1] City of Macon *v.* Franklin, 12 Ga. 239.

[2] Morant *v.* Chamberlin, 6 H. & N. 541; Schenley *v.* Commonwealth, 36 Pa. St. 29, 58.

[3] Rees *v.* Chicago, 38 Ill. 322, 335.

[4] Cases cited above.

[5] See many cases above cited.

[6] Cincinnati *v.* White, 6 Pet. 431; Commonwealth *v.* Alburger, 1 Whart. 469; Getchell *v.* Benedict, 57 Ia. 121; Dawes *v.* Hawkins, 7 C. B. N. S. 848.

[7] Dawes *v.* Hawkins just cited.

[8] St. Mary Newington Vestry *v.* Jacobs, L. R. 7 Q. B. 47.

The law of dedication is based, in all the decided cases, upon the proposition that a person cannot lead the general public, or a local public, to base their action and build up their fabric of life upon the theory of permission of a certain kind, on his part, in respect of his land, and, when they have thus accommodated their affairs to this expectation, violate the confidence thus invited.

It is true that, up to this time, the law of dedication has been actually applied, by the decided cases only to easements in favor of the general public, or of a local public. A broader application of it, however, has not in most jurisdictions been expressly denied; and the nature and origin of the law of dedication, and its foundation principles, and the whole drift of the decided cases, point to the conclusion that the doctrine, whenever the question shall arise, will be applied also to profits, — that is, to rights not merely of using another's real estate, but of stripping it (or having it stripped) by, or for the use of, the general public, of portions of the soil, — as of coal or oil; and that, in fact, such public rights will be found to have been already created and now to exist in the public.

A number of different lines of thought seem to lead inevitably to this result.

In the first place, the distinction between easements in the strict sense, and profits, is quite arbitrary. In a multitude of instances, for example, of easements of way, there is no appreciable value to the private owner, in the soil over which the way passes, and his property is, for all practical purposes, as completely taken away from him, by the easement, as if the public had a right to take away portions of the soil.

In the second place, the distinction between easements and profits is highly technical; so technical, in fact, that Blackstone in his discussion of incorporeal hereditaments alludes to no such distinction. In many modern books, too, profits are treated under the general head of "Easements."

In the third place, the limitations of the rule as to informal acquirements of profits were made and fixed with a view to conditions which do not now exist in this country with reference to land like coal and oil tracts. When those limitations became established, there were no means of transportation of coal and minerals to any distance, and the market was consequently a local market. Moreover, these rights at that time were seldom conditioned upon payment for what was taken, and in view of this,

the danger of exhaustion of a local supply had an important bearing. It was clearly to the interest of the local public that such a deposit should not be extravagantly used and prematurely exhausted; and exhaustion of it, owing to the lack of transportation facilities, might then mean local ruin. To allow the *entire public* of a community to take valuble deposits from private land without payment might, in a given instance, risk complete exhaustion in a comparatively short time; and in many cases, such indiscriminate right, if recognized, could not readily be restricted within reasonable limits. This is, in fact, the reason assigned by the authorities for the refusal to extend to profits the doctrine of informal acquirements by the public or by a community generally.[1]

In view of these considerations, the line between easements proper and profits in respect of informal acquisition by the general public, merely illustrates the general rule that the law responds accurately to the public needs as they exist at a given time, and invades private rights only so far as the public needs at that time require.

That the law has never seen anything erratic in the existence of rights of profits in a mere local public, is shown by the fact that such rights, under grant, have always existed, and still exist in England, and in this country also.[2]

It may be objected that in all the decided cases where dedication has been implied from user and acquiescence, the members of the public have themselves gone upon the land to enjoy the easement. This results almost inevitably from the nature of easements, which cannot in most instances be enjoyed by the public entirely through the agency of the owner of the fee. But if it be once admitted that the public could under proper circumstances acquire a profit by dedication, — as for example a right to go upon coal lands and dig coal, upon payment of a fair price, — it is difficult to see any fundamental reason why the public right to the coal might not be conditioned on leaving the owner of the fee in possession and management, and allowing his agents and servants to mine the coal for the public, so long as he should conform his management to the public rights. Such a condition would change, not the essential nature of the right, but only the manner of its enjoyment. An analogy would be found in the case of a public easement acquired by

[1] 2 Washburn, Real Property, 5th ed., p. 313 and n. 2.

[2] Willingale *v.* Maitland, L. R. 3 Eq. 103; Goodman *v.* Saltash, L. R. 7 App. Cas. 633; Green *v.* Putnam, 8 Cush. (Mass.) 21.

dedication over a public wharf, the owner of the wharf retaining the active management through his stevedores. And finally, if the public might possess by express dedication a right to have coal mined and sold to them at fair prices, why might not the dedication of such a right be implied from a course of dealing between owner and public exactly along those lines?

Again, if it be asked how widely this doctrine would apply, and whether it would extend to every case where mineral deposits are habitually mined or quarried and sold to the public, the answer is that, as shown above, necessity is the basis of the doctrine, and that dedication would be found to have taken place whenever the public had become practically dependent upon particular deposits. If it be asked also how large a public should be held to have acquired rights by dedication, that question may be similarly answered.

It has already been expressly admitted that the application of the doctrine of dedication now under discussion, would involve crossing some technical lines, which have in the past been regarded as circumscribing the doctrine. But the question is whether, now that the necessity has arisen, the courts would continue to respect these artificial boundary lines.

The doctrine of dedication, so far from being hampered in its application by mere technical distinctions, was called into existence for the very purpose of escaping from the technical rules and limitations. Its very vital breath, and its justification for existence, lie in disregard of existing technical limitations, and in recognition of the necessity for a resort to broad views. Consequently, as fast as any new subject or phase of public rights has been presented to the courts, they have never hesitated to apply the doctrine of dedication to the new situation. When a given proposition rests upon principle, the question of its applicability in a given instance, or of the extension of it to a new situation, is to be determined, very largely, by the principle upon which it rests; and if public necessity has now come to require, in respect of coal and oil lands, for example, the application of the doctrine of dedication, the authorities justify the belief that the application will be made.

It is hardly necessary to say that the law of dedication will not be applied where it cannot be applied with practical results; and this must be borne in mind with reference to the question of the applicability of the doctrine of dedication to coal and oil lands.

But in the case of coal or oil lands the two conditions, (*a*) of paying for the coal or oil, as taken, and (*b*) of leaving the private owners in possession and management (precisely as in the case of a public easement, acquired by dedication, over a private wharf), would meet all practical requirements.

It may therefore be said that the origin and the rapid and free growth, during the last century, of the doctrine of dedication indicates that, if there has now arisen a necessity for the application of it to rights in coal and oil lands, for example, the courts would so apply it as liberally and freely as they have applied it in favor of informal acquirement of easements, in the strict sense; and it may be well that at the present time coal lands and oil lands have on a great scale already become irrevocably dedicated to the public, to the extent of an absolute right in the public to have coal from them upon payment of a reasonable price, subject to the right of the private owners to manage them, if and so long as they will do so properly, — as the owner of the public wharf may manage it through his stevedore.

If dedication may thus have taken effect upon certain coal lands, oil lands, and the like, it may be in process and may now be taking effect, and may hereafter take effect, upon properties of this character which have been but lately opened, or may hereafter be opened.

What has thus far been urged in favor of an existing dedication of coal and oil lands to the public, has been based entirely on the common law. But it is important to observe that the ultimate establishment of such public rights is by no means dependent upon the acceptance of the writer's argument to its full extent. Even granting that the doctrine of dedication should be held by the courts to have, in its present state, limitations which prevent it from having such an operation without legislation, nevertheless the existence of that doctrine, with the scope which it admittedly has, seems unquestionably to support legislation by a legislative body of proper jurisdiction, — the question whether Congress is such a legislative body is not now being considered, — (*a*) to make the necessary extensions of the doctrine, and (*b*) to provide that the production and public marketing of coal, mineral oil, and the like, for a certain length of time, shall *ipso facto* amount to a dedication such as is immediately above suggested.

But it is not only along the line of dedication that legislation might deal effectively with property such as that under discussion without departing materially from established principles. Recent discussions as to the exercise of the right of eminent domain over coal lands have seemed to assume that there must be an outright taking, or none. On the contrary, if and in so far as a state or Congress has the power to take, the taking might be, not of the fee, or of an exclusive right to coal or oil in the soil, — to be paid for all at once, — but of an easement (in Blackstone's broad sense of the word), or a profit in favor of the public to have coal or oil produced for them, by the general owner of the land in question, and sold to them, or to those who will supply them, at a fair price. A taking in this form would vest in the public precisely the right which the law of dedication perhaps has, in the case of certain coal and oil lands, already vested in them, or would vest in them, if applicable. It would vest in the public precisely the sort of right and interest which Munn *v.* Illinois declared to have become vested in the public through the voluntary action of the owners of the grain elevator there in question; with the added element, however, of irrevocability and permanency of the public right. Eminent domain legislation of this character would be simply and absolutely in harmony with the unbroken course of growth of our institutions for hundreds of years past. It would be legislative action precisely on the principles, and along the lines, of the action of the courts in creating and developing the existing doctrine of dedication, and in harmony with the legislative action of the state of Illinois, which was declared by the Supreme Court of the United States, in Munn *v.* Illinois, to be not only valid, but in conformity with the traditions of our legal system. Such legislation would entail no pecuniary burden; for all that would be taken from a coal-mine or oil-land owner would be the power (admitting that in a given case he had it) to keep his coal or oil — worthless except for marketing — out of the market, and to refuse to produce and sell at a fair price; and for this no jury would give him, or would be warranted in giving him, much more than nominal damages. His compensation would come from a fair price for his coal or oil.

Such exercise of eminent domain would create in the public a right of a familiar class, and capable of being defined and enforced by statute or by the general law, upon perfectly well defined lines.

It would be free from the objections to public governmental ownership and control.

It may be said that if the general owner of the coal or oil lands should refuse or fail to operate his property fairly and efficiently, and in harmony with the public right, it would be necessary to take possession from him. That proposition is sound; but it applies also to all the existing steam and street railroads of the country; the telegraph and telephone lines; the gas companies, the water companies, and all the vast public service corporations; the great life insurance companies; and the national banks. Any of these are liable to receivership; and this procedure is constantly being employed. At one time, within a few years past, one fourth in value and in mileage of all the railroads of the country were being run by the courts. In fine, it is no objection to the creation or clear recognition of a public right, that that right may have to be enforced, and can be enforced. It is no answer to the imposition of a trust, where such course is necessary, that the trustee may have to be temporarily or permanently removed. Receivership, and judicial management in exceptional cases of breach of duty, are remote from governmental ownership and control in the ordinary sense of the phrase.

In closing, it may be added that Munn *v.* Illinois, and the numerous similar decisions, unquestionably disclose a mode of relief from controversies — in the case of such a taking — over the prices to be charged to consumers, and other details, by showing that all matters of detail, including price, may be fixed by statute, and that the general owner of the land may be subjected to the requirement of license and bond.

It is proposed, in a subsequent article, to present some considerations in support of the present competency of Congress to enact such legislation as is above suggested, and to indicate the form which such legislation should take.

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BOSTON.